

1 Charlie Tebbutt (OSB No. 96579)  
Dave Bahr (OSB No. 90199)  
2 Western Environmental Law Center  
1216 Lincoln Street  
3 Eugene, OR 97401  
4 (541) 485-2471 Voice  
(541) 485-2457 FAX  
5 [tebbutt@westernlaw.org](mailto:tebbutt@westernlaw.org)  
[bahr@westernlaw.org](mailto:bahr@westernlaw.org)  
6 Appellants' Counsel

7 Andrea Rodgers (OR Bar No. 04102)  
Of Counsel - Western Environmental Law Center  
8 1216 Lincoln Street  
Eugene, OR 97401  
9 (425) 888-6551 Voice  
10 (425) 888-6727 FAX  
[andrea@snoqualmiation.com](mailto:andrea@snoqualmiation.com)

11 **POLLUTION CONTROL HEARINGS BOARD**  
12 **STATE OF WASHINGTON**

13  
14 **COMMUNITY ASSOCIATION FOR**  
**RESTORATION OF THE**  
15 **ENVIRONMENT ("CARE")**

16 Appellants,  
17 *Versus*

18 **STATE OF WASHINGTON**  
**DEPARTMENT OF ECOLOGY,**

19 Respondent.  
20

PCHB Case No. \_\_\_\_\_

**NOTICE OF APPEAL OF**  
**DEPARTMENT OF ECOLOGY**  
**CONCENTRATED ANIMAL FEEDING**  
**OPERATION (CAFO) NPDES AND**  
**STATE WASTE DISCHARGE GENERAL**  
**PERMIT**

21 **INTRODUCTION**

22 The Community Association for the Restoration of the Environment ("CARE") hereby ap-  
23 peals the Washington State Department of Ecology's ("Ecology") Concentrated Animal Feeding  
24 Operation ("CAFO") National Pollution Discharge Elimination System ("NPDES") and State  
25 Waste Discharge General Permit. This appeal is required by Ecology's failure to comport its ac-  
26 tions to the procedural and substantive mandates of State and Federal law. Ecology issued the Per-  
27 mit on June 21, 2006. Appellants therefore necessarily request that this Board exercise its jurisdic-  
28

1 tion to review and correct both the Permit at issue in this matter as well as Ecology's arbitrary, ca-  
2 pricious and unlawful actions underlying the Permit on the grounds more fully described below.  
3

4 **PARTY APPEALING THIS PERMIT**

5 Community Association for Restoration  
6 of the Environment ("CARE")  
7 2241 Hudson Rd  
8 Outlook, WA 98938  
9 509-854-1662 ph  
10 509-854-2645 fax

11 **COUNSEL FOR PARTIES APPEALING THIS PERMIT**

12 Charlie Tebbutt (OSB No. 96579)  
13 Dave Bahr (OSB No. 90199)  
14 Western Environmental Law Center  
15 1216 Lincoln Street  
16 Eugene, OR 97401  
17 (541) 485-2471 Voice  
18 (541) 485-2457 FAX  
19 [tebbutt@westernlaw.org](mailto:tebbutt@westernlaw.org)  
20 [bahr@westernlaw.org](mailto:bahr@westernlaw.org)  
21 *Appellants' Counsel*

22 Andrea Rodgers (OR Bar #04102)  
23 Of Counsel - Western Environmental Law Center  
24 1216 Lincoln Street  
25 Eugene, OR 97401  
26 (425) 888-6551 Voice  
27 (425) 888-6727 FAX  
28 [andrea@snoqualmiation.com](mailto:andrea@snoqualmiation.com)  
*Appellants' Counsel*

**RESPONDING PARTY**

Washington Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

**ORDER BEING APPEALED**

This appeal seeks review of the Concentrated Animal Feeding Operation National Pollution  
Discharge Elimination System and State Waste Discharge General Permit issued by Ecology on  
June 21, 2006. A copy of the Permit is attached hereto as Exhibit A.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## GROUND FOR APPEAL

Appellants appeal the permit in its entirety as well as the underlying administrative proceedings. In particular, Appellants assert that the issuance of the NPDES permit is unlawful for the following reasons:

1. Ecology developed, reviewed and promulgated the permit in a manner which was arbitrary, capricious and/or in violation of the law as prescribed by applicable State and Federal authority.

2. The permit violates the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and Washington State's water pollution control laws (including but not limited to Water Quality Standards for Surface Waters of the State of Washington as set forth in WAC § 173.201A, and RCW 90.48 and 90.64 and other relevant state laws and regulations.

3. The final permit fails to control and monitor groundwater pollution in violation of the federal Clean Water Act and Washington State's water pollution control laws.

4. The Permit contains inadequate soil monitoring requirements, in violation of the federal Clean Water Act and Washington State water pollution control laws.

5. Ecology utilized terms and definitions in the permit that are vague, ambiguous or otherwise in violation of the federal Clean Water Act and Washington State water pollution control laws.

6. The Permit does not provide an adequate scope of coverage because Ecology has unlawfully ignored its obligations under Washington State water pollution control laws to protect ground water by declaring that ground water pollution is not within the scope of the permit.

7. The Permit fails to satisfy Washington law requiring the use of all known, available, and reasonable methods of preventing, controlling, and treating pollutants ("AKART") prior to discharge in violation of RCW 90.54.020(3)(b).

**8.** In section 3(d)(1), the Permit is unlawfully vague regarding the time allowed to implement updated nutrient management plans.

9. The Permit does not adequately provide for the public appeals process that complies with federal and state law.

**10.** The Permit does not provide public access to facility inspection, discharge or other records in violation of federal and state law.

## **STATEMENT OF FACTS**

In the United States, Concentrated Animal Feeding Operations (“CAFOs”) produce an estimated 500 million tons of manure annually, an amount that is more than three times the total generated by human beings. CAFOs endanger human health and the environment because animal excrement contains pathogens dangerous to people and wildlife, including a number of known human viral, bacterial, and parasitic pathogens. Perhaps the most significant (and relatively uncontrolled) type of CAFO pollution is the groundwater contamination caused by nearly all CAFO operations within the state of Washington. For example, groundwater pollution from CAFOs taint the groundwater with nitrates, among other contaminants, which can cause a number of severe health risks, including cancer and reproductive abnormalities. The groundwater pollution from CAFOs, is especially alarming, given the fact that many Washingtonians rely on groundwater as their primary source of drinking water.

On December 1, 2004, Ecology issued a draft NPDES/State Discharge General Permit for CAFOs within the state of Washington. Appellants submitted public comments on this draft permit. On June 21, 2006, Ecology issued the final permit, which unfortunately failed to address many, if not all, of Appellants' comments.

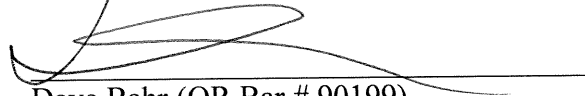
### **RELIEF SOUGHT IN THIS APPEAL**

Appellant seeks an order from the Board that the Concentrated Animal Feeding Operation National Pollution Discharge Elimination System and State Waste Discharge General Permit that Ecology issued on June 21, 2006 is invalid, unlawful and in violation of federal and state law to the

1 extent asserted above. Appellant also seeks any other relief as may be required under law and as  
2 justice so requires.

3 Appellant reserves the right to further amend this Notice of Appeal and to plead and present  
4 additional legal theories and errors in addition to those alleged herein, and to request that the plead-  
5 ings be amended to conform to the evidence.

6  
7 Respectfully submitted this 21<sup>st</sup> day of July, 2006,

8  
9 

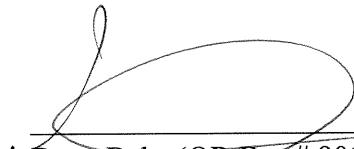
10 Dave Bahr (OR Bar # 90199)  
11 Western Environmental Law Center  
12 1216 Lincoln Street  
13 Eugene, Oregon 97401  
14 Tel: (541) 485-2471  
15 Fax: (541) 485-2457  
16 [bahr@westernlaw.org](mailto:bahr@westernlaw.org)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I, David Bahr, hereby certify that on July 21, 2006, I caused to be served a true and correct copy of: Notice of Appeal of Department of Ecology's Concentrated Animal Feeding Operation National Pollution Discharge Elimination System and State Waste Discharge General Permit that Ecology issued on June 21, 2006 upon the following party via U.S. Mail, first class postage pre-paid, addressed as follows:

State of Washington Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

  
Dave Bahr (OR Bar # 90199)  
Western Environmental Law Center  
1216 Lincoln Street  
Eugene, Oregon 97401  
Tel: (541) 485-2471  
Fax: (541) 485-2457  
[bahr@westernlaw.org](mailto:bahr@westernlaw.org)